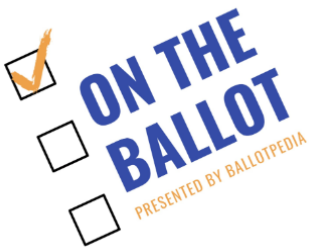


Age limits for elected officials? North Dakota's potential test case

Episode #110



Podcast Transcript



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Frank Festa

Welcome to On the Ballot with Ballotpedia, where we connect people to politics by providing neutral, nonpartisan, and reliable information on our government, how it works, and where it's headed. I'm Frank Festa, and thanks for being with us!

Earlier this week, voters in North Dakota approved a ballot measure that will establish age limits for the U.S. Senate and House of Representatives from the state. The Congressional Age Limits Initiative, or North Dakota Initiated Measure 1, as it's also known, passed with 61% of the vote and is officially the first American law of its kind to set a cap on how old you can be to serve as an elected official in our country. Now that the law has been passed, the million dollar question is...what happens next?

I'm joined now by Dr. Mark Jendrysk, a political science professor at the University of North Dakota, who has been closely following the initiative's development and the domino effect that it could potentially trigger.

Mark, thanks for coming on the show!

Dr. Mark Jendrysk

Thank you very much. Great to be here.

Frank Festa

You've been quoted and cited in so much of the reporting I've seen on this ballot measure going back months now, including our own reporting, predicting that if this ballot measure passed, it could be a potential test case for the nation at large. What made you think that initially?

Dr. Mark Jendrysk

Well, I think mainly when I saw that this was supported by the Term Limits Incorporated Group that has been trying to get major changes in how we elect and retain members of state legislatures and Congress for decades. And I think this was driven partially by the success two years ago of a term limits measure in North Dakota for the legislature and the government. We never had term limits and that was passed very easily and has become law. So I think they saw North Dakota as a good place to try this and get this passed.

And I think that they're ready to get this into the Supreme Court. I think they see the current constellation of the Supreme Court as favorable to the arguments they're making in terms of state sovereignty and those sorts of questions. So that seems to be the case for me that North Dakota is an easy place to get on the ballot. And it's a place that seems very congenial to the sort of limitations they're looking for.

OTB Episode #110 TRANSCRIPT: Age limits for elected officials? North Dakota's potential test case

Frank Festa

It definitely makes sense. And we'll get to more on SCOTUS in just a bit, but, Now that the law has passed again with about 61% of the vote, have we seen any of these related lawsuits set in motion yet?

Dr. Mark Jendrysk

Not to my knowledge. It seems like a question of who would have standing. If I'm just a citizen here in North Dakota, a resident of the state, do I have standing to sue today about this bill? And I don't think so because I'm not running for public office and I'm not 80 years old. My theory is that Term Limits USA is going to find a straw man.

Basically, the next statewide election for Congress or Senate, they're going to find some 85-year-old guy to put his name forward and say, "I'm being oppressed by not being able to run."

That, I think, is how they're going to set up a test case because I think that will lead someone with standing because obviously I don't have standing. I don't even think the 80-year-olds I know in North Dakota would have standing because they're not running for public office.

Frank Festa

Would that be the most obvious hypothetical lawsuit? Would that have to come from someone who was running for office?

Let's say, I'm 85 years old in North Dakota, and I run. This law comes into play and I can't serve. Is that what would trigger the lawsuit most likely or are there other avenues that might let it develop?

Dr. Mark Jendrysk

Well, I'm not a lawyer; my wife is, but I'm not. And I think standing is the key question because you have to show potential injury, right? And so I'm not injured by this law because I can run for office. I'm still 50 million. I think you'd have to show potential injury and I think that's what they'd be looking for. So I'm assuming they're going to find someone to run for one of these offices who's going to say, I'm being injured by this law. And that would, I think, set the case in motion.

Frank Festa

Got it. That makes sense to me. And the law technically is in effect as of this week, correct?

Dr. Mark Jendrysk

Yes, I believe so. I believe once it's actually just passed by the voters, it automatically goes into effect.

OTB Episode #110 TRANSCRIPT: Age limits for elected officials? North Dakota's potential test case

You know, sometimes when we have referendums and initiatives in North Dakota, the legislature has to pass enabling legislation or write regulations or something. But this is a very simple one. I think it just goes straight into the constitution.

Frank Festa

And speaking of the constitution, some have argued that this initiative itself is unconstitutional. What's your perspective on that?

Dr. Mark Jendrysk

Well, I would, I'd be inclined to agree given the court's decisions regarding, you know, the composition of Congress and their view that Congress sets the terms for its own membership. That was the judgment in the case in the 90s about term limits. That's kind of the key case here. Certainly there are recent decisions about how states can't disqualify candidates for federal office regarding trying to disqualify Trump under the sedition clause of the 14th Amendment, which suggests states can't disqualify people. But the only member left on the court now is Justice (Clarence) Thomas, right? And he was in favor of term limits in the case in the 90s. So we'll see what happens.

I wouldn't be surprised if this current court is a little more congenial towards the idea of states setting their own conditions for running for office and holding office at a federal level.

Frank Festa

Expand on that a little bit if you don't mind. I know that Clarence Thomas is the only remaining Supreme Court member from that 1995, I believe it was, or 1996 decision that this is directly related to. Any other inkling of how SCOTUS might think about this case and what else they might tie it to or arguments that might emerge?

Dr. Mark Jendrysk

Well, Thomas' argument, his dissent in 95 was that the Constitution was silent on age limits and therefore the states could take action on it. And I think that would be the argument, right? The Constitution is silent about an upper age bound so states could add, that might be the argument, right? That states have quasi sovereignty, right? And they can set conditions for office. But it would certainly be a major shift away from their position that they've taken even last year on this kind of question. So we'll see. But I think the state's rights argument is made.

And I think, you know, Frank, that this would open up a can of worms for all sorts of things. Imagine states saying, you have to be born in this state to hold office here, or you have to be a resident of this state for 20 years before you can run for office. And, you know, that opens up a real interesting set of possibilities, which I'm not certain the court would want to entertain, but you never know. You never know.

OTB Episode #110 TRANSCRIPT:
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That domino effect is something that's really interesting to me. In a broader sense, where do things go from here, I know that they might spill over into different types of qualifications and requirements for running for any particular office, or maybe instead we might see other states try to pursue something similar, or what do you think? What might be the next logical sequence in the action here?

Dr. Mark Jendrysk

Well, I think they're going to go for term limits next, at a state -by -state basis. They're going to say, if we pass this age limit, then term limits should be OK, too.

And I think they're going to see something like that as well. North Dakota is a great state for this because you need so few signatures to get on the ballot. So if you only need 4% of the population to get these questions on the ballot, it's a great state for this kind of test. So I could foresee the term limits group try to get other questions on the ballot like this in other states and in North Dakota to go with term limits next.

Frank Festa

Any sense from your end, Mark, of how this has been received on the ground in North Dakota? Are people excited? Are people, you know, triggered into action by this. What's the story on the ground?

Dr. Mark Jendrysk

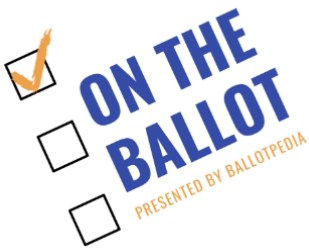
Well, it passed with 61% of the vote. So it was very popular, but this was a very low turnout election. We had a 20% voter turnout across the state. So my view is there was two strong contests in the Republican primary for governor and for US House representative. This brought out more conservative voters who are likely to favor this. I hadn't seen any much reaction beyond the straight reporting of this passing, but I don't think it'll mobilize people.

I think it probably won't have any effect until it becomes real, which might be with someone holding office who has to leave, although neither of our senators are that old, so it's not likely to happen anytime soon. Or I think it's going to be someone who's going to run for office next time there's an opening, who's going to be older, and then you're going to see a test case.

I think that's what's going to happen. And I think that's where I'll put my money in 2026, seeing some sort of test case on this.

Frank Festa

Okay. We'll have to wait and see, but Mark –Thank you again for coming on the show, man. You've been great. We'll have to have you back on the show down the road whenever that lawsuit might develop or if we see anything else related happen in North Dakota.



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Dr. Mark Jendrysk

You're welcome. Anytime.

Frank Festa

And for our listeners, please stay tuned. We'll be back in just a moment after this short break to continue on with more of the backstory of this ballot measure with one of Ballotpedia's very own. Stay tuned.

Alison Graves (ADVERTISEMENT)

Hey On the Ballot listeners! This is Alison from Ballotpedia's communication team popping in to share a little bit about our new *Did You Know?* Series!

Every week, we will offer one useful or fun political or election-related fact every Friday in Daily Brew, up through the general elections in November. Did you know that not only is trivia fun, but it can also help improve your memory, reduce stress levels, increase your knowledge base, and even improve your problem -solving skills? So through November 8, 2024, our Did You Know? Ceres will take center stage.

Replacing our Friday trivia as we lead up to the November elections. So for our very first one, get ready...

Did you know that North Dakota is the ONLY state that does not require voters to register?

That's pretty interesting!

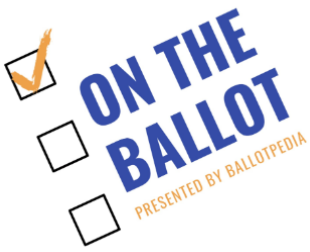
Check out our Friday, June 14th edition of Daily Brew for additional information on voting in North Dakota. And if you're not already subscribed to Daily Brew, our free newsletter, check out the link to sign up in our show notes. Stay tuned and let the adventure begin.

Frank Festa

Welcome back to On the Ballot. I'm joined now by Ballot Measure staff writer Jackie Mitchell to help bring us a little bit into the backstory more about how this Ballot Measure got on the ballot and some of the related history. Jackie, thanks for coming on the show.

Jackie Mitchell

Thanks for having me!



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Yeah, I know it's been a while, so great to have you back. So how did North Dakota Initiate and Measure One get on the ballot in the first place?

Jackie Mitchell

This initiative was sponsored by Jared Hendricks and his committee Retire Congress North Dakota. To get an initiated constitutional amendment on the ballot in North Dakota, proponents need to collect 31164 valid signatures to qualify.

Back in February, the group submitted about 42,000 signatures and the Secretary of State's office confirmed the measure qualified for the ballot in March.

Frank Festa

Generally speaking, is it hard for measures to get on the ballot in North Dakota?

Jackie Mitchell

I would say North Dakota is an easy state to get initiative on the ballot. Since North Dakota does not have a voter registration system, the number of signatures required is tied to the population reported by the last decennial census. For statutes and beta referendums, the number of signatures is 2% of the population, and for constitutional amendments, it's 4%. So the requirement for 2024 was just under 16 ,000 signatures for initiated state statutes and beta referendums, and just over 31 ,000 signatures for constitutional amendments. And each initiative petition can circulate for up to one year after it's approved to circulate.

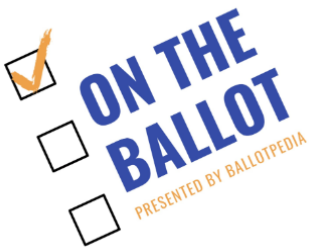
Frank Festa

Now tell us a little bit more, if you can, Jackie, about the group sponsoring the measure, Retire Congress North Dakota. I know that you mentioned that Jared Hendricks is the gentleman that's behind the organization, but what's their primary argument as to why this initiative is a good idea?

Jackie Mitchell

Yeah. So Jared Hendricks also led a campaign in support of an initiative to create term limits for governor and state legislators in 2022. He also ran for state house in the 10th district. So he was on the Republican primary ballot at this election as well, and he advanced the general election.

As for who's funding the retired Congress North Dakota committee, campaign finance reports show that the committee received a little over \$50 ,000 in cash and in kind contributions from the national group US Term Limits, which advocates for term limits across the US. And US Term Limits also supported his other committee in 2022 regarding term limits.



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And to be clear, Jared Hendricks is not some disgruntled 85 year old North Dakota that's trying to run for the Senate, right? It's not like a personal case for him, is it?

Jackie Mitchell

Correct!

Frank Festa

Outside of that, Jackie, do any other states have similar types of laws?

Jackie Mitchell

No, this is the first measure of its kind.

Frank Festa

If it's not maybe the first of this kind of law specifically, do any other states have age limits for other positions like judges?

Jackie Mitchell

So the US Constitution sets a minimum but not maximum age thresholds for presidents and members of the US Senate and House of Representatives. The minimum age to be president is 35. The age to be a senator is 30 and it's 25 to be a U .S. representative. The Constitution does not set a minimum or maximum age for Supreme Court justices. There are judicial mandatory retirement ages in many states, however.

Frank Festa

Jackie, thank you again for your time today. I really appreciate you bringing us up to speed on some of the backstory here.

Jackie Mitchell

Yeah, thanks.

Frank Festa

And for our listeners, you can learn more about our Ballot Measure coverage at the link in our show notes. We'll be back next week with another episode. Make sure you subscribe to On the Ballot wherever you listen to podcasts.

I'm Frank Festa and thanks for listening. We'll see you next week.